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DOC # 54

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

FEDERAL INSURANCE COMPANY,
et. al.

Plaintiffs,

v.

AL-QAIDA, et al.

Defendants.

CIVIL ACTION NO. 03-CV-6978 (RCC)

NOTICE OF MOTION

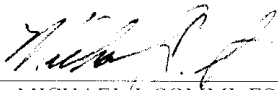
PLEASE TAKE NOTICE that upon the annexed Affidavit of Michael J. Sommi, Esquire, sworn to on January 26, 2004, Plaintiffs will move this Court at the United States District Court House for the Southern District of New York, 500 Pearl Street, New York, New York, 10007, at a date and time to be determined by the Court, for entry of an Order authorizing Plaintiffs to effectuate service of process on those defendants incarcerated in U.S. custody, by sending the Summons and Complaint via certified mail to the United States Justice Department, c/o Attorney General John Ashcroft. Plaintiffs will additionally seek this Court's permission to effectuate service of process on defendants incarcerated in certain foreign states by sending the Summons and Complaint via international registered mail to the foreign state's ministry of justice, c/o the minister of justice.

Dated: New York, New York
January 26, 2004

Respectfully submitted,

COZEN O'CONNOR

Attorneys for Plaintiffs

BY: 
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1. I am a member in the law firm of Cozen O'Connor, 45 Broadway Atrium, 16th Floor, New York, NY 10006, counsel for the Plaintiffs in the above-captioned action.
2. I respectfully submit this Affidavit in Support of Plaintiffs' Motion For Leave To Serve Incarcerated Defendants.


3. On September 11, 2001, nineteen (19) members of the al Qaida terrorist network hijacked four (4) commercial airliners, and used those planes as weapons in a coordinated terrorist attack on the World Trade Center Complex in New York, New York and the Pentagon in Arlington, Virginia (hereinafter, the "September 11th Attack" or "Attack").
4. The September 11th Attack resulted in the tragic loss of several thousand lives, personal injuries to countless other persons, and property damage on a catastrophic scale, including the complete destruction of the World Trade Center Complex.
5. At the time of the September 11th Attack, Plaintiffs provided insurance coverage to various corporations, companies, partnerships, affiliations, persons, trusts and other parties (hereinafter "Insureds") which suffered personal injury, death, property damage/destruction, or other injuries as a result of the Attack.
6. In accordance with the terms of the applicable policies of insurance, Plaintiffs have made payments to several thousand such Insureds and workers' compensation claimants, in compensation for injuries and deaths suffered as a result of the September 11th Attack.
7. On September 10, 2003, Plaintiffs filed suit against al Qaida and several hundred of its alleged supporters and sponsors, seeking recovery of all amounts paid to their Insureds and workers' compensation claimants, in compensation for injuries resulting from the September 11, 2003 terrorist attack upon the United States, and such other relief as to which they are entitled under law. Plaintiffs' Complaint also seeks recovery for certain wrongful deaths and personal injuries assigned to Plaintiffs under the applicable workers' compensation statutes.
8. Plaintiffs' Complaint alleges that the defendants provided material support and resources to al Qaida in furtherance of a conspiracy among the defendants to commit acts of international terrorism against the United States, its nationals and allies.
9. The Complaint further alleges that the September 11th Attack was a direct, intended and foreseeable product of the aforesaid conspiracy.
10. Many of the defendants in this case are amenable to personal service of process or other traditional methods contemplated by Federal Rule of Civil Procedure 4.
11. However, there are a number of defendants who cannot be reached by traditional means of service of process, such as those individuals who have been incarcerated by the United States and other foreign governments as a result of the global war on terrorism.
12. Federal Rule of Civil Procedure 4 makes it clear that service of process may be accomplished by any manner this Court deems proper. Indeed, when traditional methods are unavailable, alternative forms of service are permitted if the proposed service "is reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Smith v. Islamic Emirate of Afghanistan, 2001 U.S. Dist. LEXIS 21712, *7 (S.D.N.Y. 2001) (citing Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950)).

13. Numerous defendants have been apprehended and are known to be in U.S. custody, including all of the following: Abd al-Hadi al-Iraqi, Abd Al-Rahim Al-Nashri, Abdul Rahman Al-Amoudi, Abu Anas Al-Liby, Abu Zubaydah, Ahmed Ressay, Bensayah Belkacem, Enaam M. Arnaout, Ibn al-Shaykh al-Libi, Jamil Qasim Saeed, Khalid Shaikh Mohammed, Mamdouh Mahmud Salim, Mohamed Bayazid, Mohammed Ali Hasan Al Moayad, Mohammed Sadeek Odeh, Nurjaman Riduan Ismuddin, Ramzi Binalshibh, Sabir Lamar, Umar al-Faruq, Wadih El-Hage, Wali Khan Amin Shah, Zacarias Moussaoui and Mohammed Mohsen Yahya Zayed.
14. Plaintiffs move this Court for entry of an Order authorizing Plaintiffs to effectuate service of process on those defendants incarcerated in U.S. custody, by sending the Summons and Complaint via certified mail to the United States Justice Department, c/o Attorney General John Ashcroft.
15. Plaintiffs propose to transmit the Summons and Complaint in English, and translated into Arabic and Farsi, the official language of the incarcerated defendants listed in paragraphs 13 and 17.
16. Plaintiffs further propose to send a Service of Process Letter Request ("Letter Request") to be issued by this Court informing Mr. Ashcroft of this lawsuit and requesting the Justice Department's assistance in effecting service upon the defendants in U.S. custody, along with a Declaration of Service of Process ("Declaration") to be completed by Mr. Ashcroft once service has been successfully completed on each of the incarcerated defendants. True and correct copies of the proposed Letter Request and Declaration are attached hereto as Exhibits "A" and "B", respectively.
17. Other defendants have been arrested and are being incarcerated by foreign states, including but not limited to, Spain, Italy, Germany, Pakistan, and the United Kingdom: Abdalrahman Alarnaot Abu-Aljer, Abdelghani Mzoudi, Abdelkadir Mahmoud Es Sayed, Ahmed Barhim, Bassam Dalati Satut, Chaudhry Abdul Majeed, Essid Sami Ben Khemais, Imad Eddin Barakat Yarkas, Khalid Al-Fawaz, Lased Ben Heni, Mohamed Ben Belgacem Aouadi, Mokhtar Bouchoucha, Mounir El Motassadeq, Muhammed Galeb Kalaje Zouaydi, Rabih Haddah, Riad Hhazi, Riad Hhazi, Riadh Jelassi, Sulaiman Al-Ali, Sultan Bashiruddin Mahmood, Tarek Ben Habib Maaroufi, Tarek Charaabi, Yassir Al-Sirri, Mohammed Hamdi Al-Ahdal.
18. Plaintiffs additionally seek this Court's permission to effectuate service of process on those defendants incarcerated in certain foreign states by sending the Summons and Complaint via international registered mail to the foreign state's ministry of justice, c/o the minister of justice.
19. Plaintiffs propose to transmit the Summons and Complaint in English, and translated into Arabic, Farsi, and the national language of the country where the defendants are in custody.

20. Plaintiffs similarly propose to send a Letter Request to be issued by this Court informing the foreign state's minister of justice of this lawsuit and requesting the ministry of justice's assistance in effecting service upon the defendants in their custody, along with a Declaration to be completed by the minister of justice once service has been successfully completed on each of the incarcerated defendants in their custody. Plaintiffs propose to send the Letter Request and Declaration translated into the national language of the country where the defendants are in custody. True and correct copies of the proposed Letter Request and Declaration are attached hereto as Exhibits "C" and "D", respectively.
21. Specifically, Plaintiffs propose to send the Summons and Complaint via international registered mail to the following foreign states holding incarcerated defendants in this case: (1) Spain's Ministry of Justice, c/o Minister Jose Maria Michavila; (2) Germany's Federal Ministry of Justice, c/o Federal Minister Brigitte Zypries; (3) Italy's Ministry of Justice, c/o Minister Roberto Castelli; (4) United Kingdom's Law Officers' Department, c/o Attorney General Lord Goldsmith QC; (5) Belgium's Federal Public Service Office, c/o Minister Laurette Onkelinx; (6) Yemen's Ministry of Justice, c/o Minister Adnan Omar al-Jefri; (7) Jordan's Ministry of Justice, c/o Minister Salah Bashir; (8) Lebanon's Ministry of Justice, c/o Minister Samir al-Jisr; and (9) Pakistan's Ministry of Law and Justice, c/o Minister Mian Khursheed Mehmood Kasuri.
22. As is recommended above, transmitting the Summons and Complaint to the United States Justice Department, c/o Attorney General John Ashcroft, and to the foreign state's ministry of justice, c/o the minister of justice, with the proper translations, will provide sufficient notice of this lawsuit and is reasonably calculated, under all circumstances, to apprise the incarcerated defendants of the pendency of this action and afford them an opportunity to present their objections.
23. Therefore, in light of the fact that the above named defendants in this case cannot be reached by traditional means of service of process contemplated by Federal Rule of Civil Procedure 4, Plaintiffs respectfully request this Court's permission to effectuate service of process by sending the Summons, Complaint, Letter Request and Declaration by certified mail to the United States Justice Department, c/o Attorney General John Ashcroft, as well as by international registered mail to the foreign state's ministry of justice, c/o the minister of justice.


MICHAEL L. SOMMI, ESQ. (MS-7910)

Subscribed and sworn to
before me this 26 day
of January, 2004.



Notary Public

RHONDA R. ROBINSON
Notary Public, State of New York
No. 01505964406
Qualified in Suffolk County
Commission Expires January 16, 2006

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

FEDERAL INSURANCE COMPANY, :
et. al. :
 : CIVIL ACTION NO. 03-CV-6978 (RCC)
Plaintiffs, :
 :
v. :
 :
AL-QAIDA, et al. :
 :
Defendants. :

To: Attorney General John Ashcroft, United States Department of Justice

From: The United States District Court for the Southern District of New York

Re: *Federal Insurance Co. et al., v. Al-Qaida et al.*
Civil Action No. 03-CV-6978 (S.D.N.Y. 2003)

Attorney General Ashcroft:

On September 10, 2003, Plaintiffs filed suit against Al Qaida and several hundred of its alleged supporters and sponsors, seeking recovery of all amounts paid to their Insureds and workers' compensation claimants, in compensation for injuries resulting from the September 11, 2001 terrorist attack upon the United States, and such other relief as to which they are entitled under law. Plaintiffs' Complaint also seeks recovery for certain wrongful deaths and personal injuries assigned to Plaintiffs under the applicable workers' compensation statutes. Plaintiffs' Complaint alleges that the defendants provided material support and resources to Al Qaida in furtherance of a conspiracy among the defendants to commit acts of international terrorism against the United States, its nationals and allies.

Upon information and belief, certain defendants have been incarcerated by the United States as a result of the global war on terrorism. Those defendants include: Abd al-Hadi al-Iraqi, Abd Al-Rahim Al-Nashri, Abdul Rahman Al- Amoudi, Abu Anas Al-Liby, Abu Zubaydah, Ahmed Ressam, Bensayah Belkacem, Enaam M. Arnaout, Ibn al-Shaykh al-Libi, Jamil Qasim Saeed, Khalid Shaikh Mohammed, Mamdouh Mahmud Salim, Mohamed Bayazid, Mohammed Ali Hasan Al Moayad, Mohammed Sadeek Odeh, Nurjaman Riduan Ismuddin, Ramzi Binalshibh, Sabir Lamar, Umar al-Faruq, Wadih El-Hage, Wali Khan Amin Shah, Zacarias Moussaoui and Mohammed Mohsen Yahya Zayed.

Plaintiffs are attempting to effectuate service of process on these incarcerated defendants. Therefore, in the furtherance of justice, this Court requests that you forward the attached Summons and Complaint through the appropriate channels to the above named defendants

A

currently in the custody of the United States. The Summons and Complaint are being provided in English, Arabic and Farsi.

Finally, attached hereto are Declarations of Service of Process for each of the incarcerated defendants in your custody. As soon as service upon any incarcerated defendant is completed, kindly execute, notarize and return the corresponding Declaration confirming service of the Summons and Complaint upon that defendant.

Thank you for your cooperation and assistance in this matter.

Dated: _____

J.
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

FEDERAL INSURANCE COMPANY,	:	
et. al.	:	
	:	CIVIL ACTION NO. 03-CV-6978 (RCC)
Plaintiffs,	:	
	:	
v.	:	
	:	
AL-QAIDA, et al.	:	
	:	
Defendants.	:	

DECLARATION OF SERVICE OF PROCESS

Acting upon the request of the Judge Richard C. Casey of the United States District Court for the Southern District of New York, I, John Ashcroft, Attorney General for the United States Department of Justice, hereby declare that the Summons and Complaint in the above captioned lawsuit was successfully served on (Insert name of defendant). (Insert name of defendant) received the Summons and Complaint, in English and translated into Arabic and Farsi, on or about (Insert date defendant was served with the Summons and Complaint).

Dated: _____
Attorney General John Ashcroft
United States Department of Justice

B

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

FEDERAL INSURANCE COMPANY, :
et. al. :
 : CIVIL ACTION NO. 03-CV-6978 (RCC)
Plaintiffs, :
 :
V. :
 :
AL-QAIDA, et al. :
 :
Defendants. :

To: (Insert name of foreign state's Minister of Justice)

From: The United States District Court for the Southern District of New York

Re: *Federal Insurance Co. et al., v. Al-Qaida et al.*
Civil Action No. 03-CV-6978 (S.D.N.Y. 2003)

Sir or Madam:

On September 10, 2003, Plaintiffs filed suit against Al Qaida and several hundred of its alleged supporters and sponsors, seeking recovery of all amounts paid to their Insureds and workers' compensation claimants, in compensation for injuries resulting from the September 11, 2001 terrorist attack upon the United States, and such other relief as to which they are entitled under law. Plaintiffs' Complaint also seeks recovery for certain wrongful deaths and personal injuries assigned to Plaintiffs under the applicable workers' compensation statutes. Plaintiffs' Complaint alleges that the defendants provided material support and resources to Al Qaida in furtherance of a conspiracy among the defendants to commit acts of international terrorism against the United States, its nationals and allies.

Upon information and belief, certain defendants have been incarcerated by your government as a result of the global war on terrorism. Those defendants include: _____

Plaintiffs are attempting to effectuate service of process on these incarcerated defendants. Therefore, in the furtherance of justice, this Court requests that you forward the attached Summons and Complaint through the appropriate channels to the above named defendants currently in your country's custody. The Summons and Complaint are being provided in English, Arabic, Farsi and _____, the national language of _____ (name of country).

C

Finally, attached hereto are Declarations of Service of Process for each of the incarcerated defendants in your custody. As soon as service upon any incarcerated defendant is completed, kindly execute, notarize and return the corresponding Declaration confirming service of the Summons and Complaint upon that defendant.

Thank you for your cooperation and assistance in this matter.

Dated: _____

J.
United States District Judge

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

FEDERAL INSURANCE COMPANY,
et. al.

Plaintiffs,

v.

AL-QAIDA, et al.

Defendants.

CIVIL ACTION NO. 03-CV-6978 (RCC)

PROPOSED ORDER

It is hereby ORDERED that Plaintiffs' Motion For Leave to Serve Incarcerated Defendants is GRANTED.

It is further ORDERED that Plaintiffs may properly effect service of process on those defendants incarcerated in U.S. custody, by sending the Summons and Complaint, along with a copy of this Order, Service of Process Letter Request and Declaration of Service of Process, via certified mail to the United States Justice Department, c/o Attorney General John Ashcroft.

It is further ORDERED that Plaintiffs may properly effect service of process on defendants incarcerated in certain foreign states by sending the Summons and Complaint, along with a copy of this Order, Service of Process Letter Request and Declaration of Service of

D

Process, via international registered mail to the foreign state's ministry of justice, c/o of the minister of justice.

SO ORDERED:

Dated: _____

J.
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

FEDERAL INSURANCE COMPANY,	:	
et. al.	:	
	:	CIVIL ACTION NO. 03-CV-6978 (RCC)
Plaintiffs,	:	
	:	
v.	:	
	:	
AL-QAIDA, et al.	:	
	:	
Defendants.	:	

DECLARATION OF SERVICE OF PROCESS

Acting upon the request of the Judge Richard C. Casey of the United States District Court for the Southern District of New York, I, (Insert name of foreign state's Minister of Justice), hereby declare that the Summons and Complaint in the above captioned lawsuit was successfully served on (Insert name of defendant). (Insert name of defendant) received the Summons and Complaint, in English and translated into Arabic, Farsi, and (Insert language), the national language of (Insert name of country holding defendants), on or about (Insert date defendant was served with the Summons and Complaint).

Dated: _____

(Insert name of minister of justice and
formal name of ministry of justice)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Plaintiffs' "Motion For Leave To Serve Incarcerated Defendants" was served upon the following counsel of record on the 27th day of January, 2004 by United States Mail, first class, postage prepaid. Please see attached service list.

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